

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

**Honorable Ronald H. Sargis**  
**Chief Bankruptcy Judge**  
**Sacramento, California**

**April 28, 2022 at 10:30 a.m.**

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<b>1.</b>	<b><u>21-20225</u>-E-7</b> <b><u>MOH-2</u></b>	<b>DONALD JOHNSON</b> <b>Michael Hays</b>	<b>CONTINUED OBJECTION TO CLAIM OF CARALY JOHNSON, CLAIM NUMBER 2 9-2-21 [65]</b>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 3007-1 Objection to Claim—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 7 Trustee, and Office of the United States Trustee on September 2, 2021. By the court's calculation, 60 days' notice was provided. 44 days' notice is required. Fed. R. Bankr. P. 3007(a) (requiring thirty days' notice); Local Bankr. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo), 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<b>The Objection to Proof of Claim Number 2-1 of Creditor is <span style="color:red">XXXXX</span>.</b>
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Donald B. Johnson, Debtor, (“Objector”) requests that the court disallow the claim of Caraly Johnson (“Creditor”), Proof of Claim No. 2-1 (“Claim”), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$228,125.72. Objector asserts that:

- Item A: Debtor contests he should not be required to pay rent to live on a property that he has a legal interest in.
- Item B: Creditor has not provided copies of any documents supporting the claim of hazardous material and trash removal from Paradise property and it is Debtor’s understanding that FEMA paid for the cleanup.
- Item C: The \$30,000.00 for Creditor’s prepayment of expected insurance proceeds to be reimbursed by Debtor will be distributed in the divorce proceeding, not this bankruptcy case.
- Item D: A judgment in California Superior Court was entered against Creditor for fraudulent transfer of Debtor’s home into her name. Debtor contends Creditor should have cross complained him if she did not believe she was responsible.
- Item E: Creditor has not provided proof of the destruction of the trailer. Additionally, it was Debtor’s belief that she gave him the trailer as a portion of his share of their community property because she signed the title releasing her interest in the property.

## **DISCUSSION**

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor’s proof of claim. *Wright v. Holm* (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie* (In re Wylie), 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

## **PARTIES STIPULATION**

On December 1, 2021, Debtor filed a Stipulation to continue the hearing. Dckt. 87. The Stipulation was signed by all parties and states the hearing shall be continued again to February 10, 2022 at 10:30 a.m. Parties state a settlement is still contemplated with regard to the Proof of Claim and Objection. If the matter is not settled creditor shall have until January 27, 2022 to file any responsive pleading.

## **ORDER GRANTING STIPULATION**

On December 3, 2021, the court entered an order pursuant to the Stipulation and Joint Motion to continue the hearing. Dckt. 88. Pursuant to the order, the hearing on the Objection to Proof of Claim Number 2-1 of Creditor is continued to February 10, 2022 at 10:30 a.m. in Courtroom 33.

## **MATTER STATUS**

The court notes no status update has been filed with the court regarding Debtor's Objection to Creditor's Proof of Claim. There is no indication that the parties settled. Additionally, Creditor has yet to file a responsive pleading, which was due by January 27, 2022. Stipulation, Dckt. 87.

## **ORDER CONTINUING MATTER**

On February 4, 2022, the court entered an order continuing the hearing for Debtor's Objection to Proof of Claim pursuant to the Joint *Ex Parte* Motion and Stipulation for Additional Continuance. Dckts. 108, 106. The hearing is continued to April 28, 2022 at 10:30 am.

## **APRIL 28, 2022 HEARING**

On April 21, 2022, another Joint *Ex Parte* Motion to further continue the hearing on this Objection to Claim was filed. In light of the multiple continuances, the court did not continue the hearing, but conducted it so the Parties could advise the court of their ongoing, good faith, efforts to resolve this matter and the underlying issues. This Objection to Claim was filed on August 31, 2021, which is eight months prior to the April 28, 2022 hearing.

At the hearing XXXXXXXXXXXXXXXXXXXXXXXXXXXX

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim of Caraly Johnson ("Creditor"), filed in this case by Donald B. Johnson, Chapter 7 Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection to Proof of Claim Number 2-1 of Creditor is XXXXXXXXXXXX

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on March 8, 2022. By the court's calculation, 51 days' notice was provided. 28 days' notice is required.

The Motion for Order Approving Stipulation re: Avoiding Tax Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p><b>The Motion for Order Approving Stipulation re: Avoiding Tax Claim is granted.</b></p>
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J. Michael Hopper, ("Trustee"), requests that the court approve a stipulation with United States Internal Revenue Service, ("Creditor") to avoid the penalty and penalty interest portions of the tax lien asserted by the IRS against the estate and funds held by the Trustee.

## STIPULATION

Debtor and Creditor have entered into a stipulation. The full terms of the Stipulation are set forth in Exhibit A filed in support of the Motion, Dckt. 40:

- A. By Proof of Claim 2-2, the IRS asserts that a portion of the claim is secured by, among other things, a lien ("Tax Lien") perfected by filings in Yolo County on October 15, 2020, and California Secretary of State filing on January 28, 2021.

- B. The Tax Lien secures an obligation of the Debtor for tax year 2018, the penalty portion of which as of the petition date aggregated \$57,588.39 (“Penalties”).
- C. Accrued interest on the Penalties through the petition date is \$6,061.46 (“Penalty Interest”).
- D. The Trustee reports that he has recovered \$84,186.67 (“Deposit Funds”).
- E. The IRS asserts a lien against the Deposit Funds by virtue of the Tax Lien.
- F. The Penalties and Penalty Interest portion of the Tax Lien, in a total amount of \$63,649.85, shall be avoided pursuant to 11 U.S.C. § 724(a) as to all property of the bankruptcy estate, including the Deposit Funds.

## **APPLICABLE LAW**

United States Bankruptcy Code § 724(a) states:

The Trustee may avoid a lien that secures a claim of a kind specified in section 726(a)(4) of this title.

United States Bankruptcy Code § 726(a)(4) states:

Except as provided in section 510 of this title property of the estate shall be distributed -in payment of any allowed claim, whether secured or unsecured for any fine, penalty, or forfeiture... arising before the earlier of the order for relief or the appointment of a trustee...

United States Bankruptcy Code § 507(a)(8)(A) states:

The following expenses and claims have priority in the following order: eighth, allowed unsecured claims of governmental units, only to the extent that such claims are for - a tax on or measured by income or gross receipts for taxable year ending on or before the date of the filing of the petition.

## **DISCUSSION**

Here, Creditor has a valid claim against the estate because the claim is a secured and unsecured claim from a governmental unit, the IRS, for a tax for a taxable year, 2018, before the Trustee was appointed, petition date is May 5, 2021. Proof of Claim 2-2; 11 U.S.C. § 507(a)(8)(A).

Further, Creditor agrees for the total amount of \$63,649.85 shall be avoided pursuant to 11 U.S.C. § 724(a), as to all property of the bankruptcy estate including Deposit Funds. Additionally, Trustee points out the court that by putting forth this Stipulation it resolves a potential dispute in determining the appropriate treatment of the claim. The court approves the Stipulation and shall enter an order avoiding the lien of Creditor for the \$63,649.85, with said lien preserved for the benefit of the bankruptcy estate (11 U.S.C. § 551).

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Approve Stipulation filed by J. Michael Hopper (“Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for Order Approving Stipulation re: Avoiding Tax Claim between Trustee and United States Internal revenue Service (Creditor) is granted and pursuant thereto;

**IT IS FURTHER ORDERED** that the lien of Creditor in assets of the Bankruptcy Estate is avoided for the tax penalties and interest on the tax penalties in the amount of \$63,649.85, and all further interest accruing on such penalties and interest, which lien is preserved for the benefit of the Bankruptcy Estate in this Case as provided in 11 U.S.C. § 551.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on March 16, 2022. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p><b>The Motion for Allowance of Professional Fees is granted.</b></p>
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Desmond, Nolan, Livaich & Cunningham, the Attorney ("Applicant") for J. Michael Hopper, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period May 20, 2021, through March 7, 2022. The order of the court approving employment of Applicant was entered on May 20, 2021. Dckt. 13. Applicant requests fees in the amount of \$7,480.00 and costs in the amount of \$69.58.

#### APPLICABLE LAW

## Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

*In re Garcia*, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

## Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

## Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:



- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

*In re Puget Sound Plywood*, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant's services for the Estate include reviewing case file, communicating with Trustee, IRS, and Debtor, preparing fee and employment applications, analyzed payroll liabilities, and partook in litigation. The Estate has \$82,862.82 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

## **FEES AND COSTS & EXPENSES REQUESTED**

### **Fees**

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

General Case Administration: Applicant spent 5.20 hours in this category. Applicant reviewed outstanding issues and prepared and attended status conferences.

Litigation and Contested Matters: Applicant spent 2.40 hours in this category. Applicant handled a dispute that arose from Debtor's exemption and assisted Trustee's negotiations with Debtor to withdraw exemption.

Asset Analysis and Recovery: Applicant spent 5.60 hours in this category. Applicant assisted Trustee in assessing Debtor's scheduled Receivables, communicated with Debtor and her prior counsel, and prepared demand letters.

Fee/Employment Applications: Applicant spent 5.20 hours in this category. Applicant prepared fee and employment applications for the estate's professionals.

Tax Issues: Applicant spent 3.60 hours in this category. Applicant analyzed and took part in communications regarding possible payroll tax liabilities of the estate and drafted a stipulation with the IRS to avoid the penalty portion of its tax lien.

Claims Administration & Objections: Applicant spent 2.20 hours in this category. Applicant handled an IRS claim and underlying lien.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which

compensation is requested, and the hourly rates are:

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
J. Russell Cunningham, Attorney	10.50	\$425.00	\$4,462.50
Benjamin C. Tagert	13.30	\$225.00	\$2,992.50
Former Law Clerk	0.40	\$75.00	\$30.00
<b>Total Fees for Period of Application</b>			<b>\$7,485.00</b>

Applicant is only requesting \$7,480.00 in fees based on the average billing rate of all professionals.

Applicant also indicates that Mr. Tagert's standard billing rate is \$225.00 and \$175.00. However, upon review of the supporting exhibits showing contemporaneous billing statements, Mr. Tagert only billed an hourly rate of \$225.00. This is consistent with the amount of fees requested.

### **Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$69.58 pursuant to this application.

The costs requested in this Application are,

<b>Description of Cost</b>	<b>Per Item Cost, If Applicable</b>	<b>Cost</b>
Copying	\$0.10	\$6.90
Postage		\$21.48
Miscellaneous - CourtCall		\$41.20
<b>Total Costs Requested in Application</b>		<b>\$69.58</b>

## **FEES AND COSTS & EXPENSES ALLOWED**

### **Fees**

#### **Hourly Fees**

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$7,480.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds

of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

## **Costs & Expenses**

### **Attempting to Recover Inappropriate Costs**

Applicant is expected as part of its hourly rate to have the necessary and proper office and business support to provide these professional services to Client. These basic resources include, but are not limited to, basic legal research (such as online access to bankruptcy and state laws and cases); phone, email, and facsimile; and secretarial support. The costs requested by Applicant include CourtCall.

While Applicant requested reimbursement for costs associated with making telephonic Court Call Appearances, the court does not permit such reimbursements and therefore declines to award Applicant Court Call costs. The decision to attend hearings via Court Call is at the cost of the attorney included in the hourly rate for the services.

Here, Applicant could have appeared in person, but probably recognized how even with the associated costs it is more economically efficient to attend remotely. CourtCall is a very effective tool allowing attorneys to market their legal skills (and generate fees from a much larger client base). Therefore, Applicant is only entitled to receive payment in the amount of \$682.91. This amount reflects the expenses and costs Applicant incurred from serving various documents in connection with Client's Chapter 11 bankruptcy case.

First and Final Costs in the amount of \$28.38 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

The court authorizes the Chapter 7 Trustee to pay 100% of the fees and 100% of the costs allowed by the court.

Applicant is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$7,480.00
Costs and Expenses	\$28.38

pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Desmond, Nolan, Livaich & Cunningham ("Applicant"), Attorney for J. Michael Hopper, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Desmond, Nolan, Livaich & Cunningham is allowed the following fees and expenses as a professional of the Estate:

Desmond, Nolan, Livaich & Cunningham, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$7,480.00  
Expenses in the amount of \$28.38,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee

**IT IS FURTHER ORDERED** that the Chapter 7 Trustee is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

# FINAL RULINGS

4. [21-21668-E-7](#) [DNL-5](#) VANESSA GARCIA FIGUEROA Thomas Amberg MOTION FOR COMPENSATION FOR BACHECKI, CROM & CO., LLP, ACCOUNTANT(S) 3-16-22 [48]

**Final Ruling:** No appearance at the April 28, 2022 hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, and Office of the United States Trustee on March 16, 2022. By the court’s calculation, 43 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

**The Motion for Allowance of Professional Fees is granted.**

Bachecki, Crom & Co., LLP, the Accountant (“Applicant”) for J. Michael Hopper, the Chapter 7 Trustee (“Client”), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period June 28, 2021, through March 4, 2022. The order of the court approving employment of Applicant was entered on July 12, 2021. Dckt. 24. Applicant requests fees in the amount of \$1,207.50 and costs in the amount of \$0.80.

## APPLICABLE LAW

## Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the professional's services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the professional exercise reasonable billing judgment?

*In re Garcia*, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

## Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

## Reasonable Billing Judgment

Even if the court finds that the services billed by a professional are “actual,” meaning that the fee application reflects time entries properly charged for services, the professional must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. A professional must exercise good billing judgment with regard to the services provided because the court’s authorization to employ a professional to work in a bankruptcy case does not give that professional “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

*In re Puget Sound Plywood*, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant's services for the Estate include assisting Trustee with investigating accounts receivable and conferred with Trustee regarding tax claims. The Estate has \$82,862.82 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

## **FEES AND COSTS & EXPENSES REQUESTED**

### **Fees**

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Asset Investigation: Applicant spent 0.40 hours in this category. Applicant investigated accounts receivable including potentially accessing Debtor's accounting software.

Claims Analysis: Applicant spent 0.30 hours in this category. Applicant analyzed IRS claim

Tax Return Preparation: Applicant spent 1.60 hours in this category. Applicant conferred with Trustee regarding tax claims, tax liens and assess activity to determine no income tax returns are required to be filed by the Estate.

The Court notes that Applicant does not provide a comprehensive breakdown of the services rendered. Applicant merely provides a brief summary of their services and instructs the Court to look to their Exhibits filed for a comprehensive breakdown. The Court normally would not oblige to such a request, however, given the small amount of hours billed and the reasonableness of services provided, the court will review the exhibits to confirm the hours requested.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Jay D. Crom	0.20	\$575.00	\$115.00

Jay D. Crom	1.70	\$545.00	\$926.50
Virginia Huan-Lau	0.10	\$415.00	\$41.50
Paula Law	0.30	\$415.00	\$124.50
<b>Total Fees for Period of Application</b>			\$1,207.50

### **Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$0.80 pursuant to this application.

The costs requested in this Application are,

<b>Description of Cost</b>	<b>Per Item Cost, If Applicable</b>	<b>Cost</b>
PACER		\$0.80
<b>Total Costs Requested in Application</b>		\$0.80

### **FEES AND COSTS & EXPENSES ALLOWED**

#### **Fees**

#### **Hourly Fees**

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$1,207.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

#### **Costs & Expenses**

First and Final Costs in the amount of \$0.80 are approved pursuant to 11 U.S.C. § 330] and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

The court authorizes the Chapter 7 Trustee to pay 100% of the fees and 100% of the costs allowed by the court.

Applicant is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$1,207.50
Costs and Expenses	\$0.80



pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Bachecki, Crom & Co., LLP (“Applicant”), Accountant for J. Michael Hopper, the Chapter 7 Trustee, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Bachecki, Crom & Co., LLP is allowed the following fees and expenses as a professional of the Estate:

Bachecki, Crom & Co., LLP, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$1,207.50  
Expenses in the amount of \$0.80,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.

**IT IS FURTHER ORDERED** that the Chapter 7 Trustee is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

**Final Ruling:** No appearance at the April 28, 2022 hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 25, 2022. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion for Final Decree has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<b>The Motion for Final Decree is granted.</b>
------------------------------------------------

The Motion for Final Decree and Order Closing Case has been filed by Alejandro C Alejandro and Griselda Gonzalez ("Debtor in Possession"). Dckt. 137. Debtor in Possession makes this request pursuant to 11 U.S.C. § 350.

Debtor in Possession filed for bankruptcy relief under Chapter 11. Debtor in Possession's Plan was confirmed on February 1, 2022. Dckt. 117. The order confirming the Plan is now final and Debtor in Possession claims their case has been fully administered.

## **APPLICABLE LAW**

### **Final Decree and Closing of Case**

Federal Rules of Bankruptcy Procedure Rule 3022 provides that, after an estate is fully administered in a Chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case. 11 U.S.C. § 350(a) states additionally that the court is required to close a case after an estate is "fully administered and the court has discharged the trustee."

The fact that the estate has been fully administered merely means that all available property has been collected and all required payments made. *In re Menk*, 241 B.R. 896, 911 (9th Cir. B.A.P. 1999).

To determine whether a Chapter 11 case has been “fully administered,” factors the court considers include whether:

- A. the plan confirmation order is final;
- B. deposits required by the plan have been distributed;
- C. property to be transferred under the plan has been transferred;
- D. the debtor (or the debtor’s successor under the plan) has taken control of the business or of the property dealt with by the plan;
- E. plan payments have commenced; and
- F. all motions, contested matters, and adversary proceedings have been finally resolved.

Federal Rule of Bankruptcy Procedure 3022, Adv. Comm. Note (1991). Additionally, unless the Chapter 11 plan or confirmation order provides otherwise, a Chapter 11 case should not remain open solely because plan payments have not been completed. *See id.*; *In re John G. Berg Assocs., Inc.*, 138 B.R. 782, 786 (Bankr. E.D. Pa. 1992).

## **DISCUSSION**

Movant argues the following factors support approval of the Motion:

- A. Debtor has made all payments under the Chapter 11 Reorganization and is current on those payments and shall remain current on those payments.
- B. This Application is supported by the Declaration of Alejandro C Alejandro and Griselda Gonzalez.
- C. Debtor has continued with the management of the property dealt with under the Plan.
- D. There are no unresolved motions, contested matters, or adversary proceedings.
- E. The estate has been fully administered within the meaning of 11 U.S.C. § 350(a).
- F. All claims and expenses required to be paid upon plan confirmation or the Effective Date of the Plan has been paid.
- G. Debtor represents that all post-confirmation taxes have been paid.

There being no objection, Debtor is entitled to the closing of the case.

In consideration of the factors indicating full administration, the court finds the Estate has been fully administered. The Motion is granted, and the court shall enter an order closing the Chapter 11 case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Final Decree and Order Closing Case filed by Alejandro C Alejandro and Griselda Gonzalez (“Debtor in Possession”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, the Chapter 11 case is closed, and the Clerk of the Court is authorized to close this case.

The court has continuing jurisdiction for this bankruptcy case, including, without limitation, the confirmed Chapter 11 Plan, and performance, breaches, and enforcement of said Confirmed Plan.

**Final Ruling: No appearance at the April 28, 2022 Hearing is required.**

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor’s Attorney, Chapter 7 Trustee, RBS Citizens, N.A., Citizens Financial Group, Inc., and Office of the United States Trustee on January 24, 2022. By the court’s calculation, 38 days’ notice was provided. 28 days’ notice is required.

The Motion to Avoid Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p><b>The Motion to Avoid Judicial Lien is granted.</b></p>
-------------------------------------------------------------

This Motion requests an order avoiding the judicial lien of RBS Citizens, N.A. (“Creditor”) against property of the debtor, Bobbie Gail McMahan (“Debtor”) commonly known as 12 Garden Park Drive, Chico CA 95973, California (“Property”).

Debtor asserts that Creditor hold a judicial lien against the Property “in the amount of \$225,000.00.” Motion, Dckt. 12.

Debtor had not provided a copy of the recorded abstract of judgment. Rather, there is a copy of an abstract of judgment (with no recording information) issued on May 14, 2018, for the judgment entered on January 6, 2015. Exhibit, Dckt. 14 at 11.

Included with the Exhibits is what appears to be a portion of an unauthenticated preliminary title report. *Id.* at 12-13. Item 10 is for an abstract of judgment for Creditor in the amount of \$150,728.83, which is stated to have been recorded on June 5, 2018. The recording information is stated to be “Recorded in: Butte County Official Records Serial No. 2018-19030. *Id.* at 10.

There is no date given for when the unauthenticated excerpt from a preliminary title report was generated. However, the current property tax information is November 2019 and February 2020.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$415,400.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$157,221.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. The court notes that Debtor's Motion refers to Schedule D in Exhibit 1, however, Exhibit 1 does not appear to contain Schedule D. See Exhibit 1, Dckt. 14. The court may refer to Debtor's voluntary petition (Dckt. 1) for Schedule D, but Debtor is reminded that such relevant information should be included in Debtor's Exhibits.

Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$33,179.00 on Schedule C. Dckt. 1. However, in Debtor's Motion, Debtor claims an exemption in the amount of \$258,179.00. Motion at 2, Dckt. 12. It appears Debtor inadvertently wrote their Net Equity as a claimed exemption on Schedule C, rather than their proper Homestead Exemption.

The hearing was continued to allow Debtor to file a copy of the recorded judgment lien to be avoided.

### **March 17, 2022 Hearing**

On March 14, 2022, Debtor filed a supplemental exhibit, the Abstract of Judgment with the recording information, and Declaration authenticating the Exhibit. Dckts. 26, 27. With this supplemental evidence, the court may properly rule on the Motion and issue an effective order for recording with the County Recorder.

A judgment was entered against Debtor in favor of Creditor in the amount of \$150,728.83. Exhibit, Dckt. 27. An abstract of judgment was recorded with Butte County on June 5, 2018, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$415,400.00 as of the petition date. Dckt. 1 at 11. The unavoidable consensual liens that total \$157,221.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1 at 20.

In the Motion it is asserted that Debtor has claimed an exemption in the amount of \$258,179.00 in the Property. However, as addressed above, Schedule C states an exemption of \$33,179.00. Sch C, Dckt. 1 at 18; and filed as Exhibit A in support of the Motion, Dckt. 14 at 9.

Applying the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), the determination of the extent to which the Abstract of Judgment impairs the lien is as follows:

FMV of the Property.....	\$415,400.00
Consensual Lien.....	(\$157,221.00)
Homestead Exemption.....	(\$ 33,179.00)

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\$ 225,000 in value for the Judgment Lien in excess of the  
consensual liens and homestead exemption

In the Motion, it is asserted that the amount of the judgment as of the commencement of this case (\$225,000). Motion, ¶ 6; Dckt. 12. This is exactly equal to the value of the property that is in excess of the consensual liens and homestead exemption.

Therefore, the fixing of the judicial lien impairs Debtor's exemption, for the amount stated on Schedule C, of the real property, and its fixing is avoided in excess of \$225,000.00 subject to 11 U.S.C. § 349(b)(1)(B).

It appears that there may have been a clerical error on Schedule C and Debtor misstated the amount of the exemption which could be claimed against a judgment lien created in 2018. If even at the lower amount of the homestead exemption in 2018, there would be a substantial equity to be exempted.

#### **April 7, 2022 Hearing**

No Amended Schedule C has been filed by Debtor. At the hearing it was requested that the hearing be further continued to allow for the filing of an Amended Schedule C.

#### **Amended Schedule C**

On April 12, 2022, Debtor filed an Amended Schedule C. Dckt. 32. The Amended Schedule C reflects the proper Homestead Exemption of \$258,179.00. Applying the arithmetical formula:

FMV of the Property.....	\$415,400.00	
Consensual Lien.....	(\$157,221.00)	
Homestead Exemption.....	(\$ 258,179.00)	
	<u>=====</u>	
	\$ 0.00	in value for the Judgment Lien in excess of the consensual liens and homestead exemption

Therefore, the fixing of the judicial lien impairs Debtor's exemption, for the amount stated on Schedule C, of the real property, and its fixing is avoided in its entirety subject to 11 U.S.C. § 349(b)(1)(B).

An order substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Bobbie Gail McMahan ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of RBS Citizens, N.A. ("Creditor"), California Superior Court for Contra Costa County Case No. CIVMSC 13-02020, recorded on June 5, 2018, Document No. 2018-0019030, with the Butte County Recorder, against the real property commonly known as 12

Garden Park Drive, Chico California, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.